

**KENTUCKY PERSONNEL BOARD
MINUTES OF FEBRUARY 14, 2014**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Doug Sapp on February 14, 2014, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board Personnel Present:

Wayne "Doug" Sapp, Chairman
Larry B. Gillis, Vice Chairman
David B. Stevens, Member
Tommy W. Chandler, Member
Donald W. "Don" Blevins, Member
Ramona Herndon, Member
Mark A. Sipek, Executive Director and Secretary
Boyce A. Crocker, General Counsel
Linda R. Morris, Administrative Section Supervisor
Cynthia Perkins, Administrative Specialist

Board Personnel Absent:

David F. Hutcheson, Jr., Member

2. **READING OF THE MINUTES OF REGULAR MEETING HELD JANUARY 10, 2014**

The minutes of the last Board meeting had been previously circulated among the members. Chairman Sapp asked for additions or corrections. Mr. Blevins moved to approve the minutes, as submitted. Ms. Herndon seconded and the motion carried 5-0. The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek stated that the Governor's proposed budget does not include funds to hire a full-time Hearing Officer. If the Legislature agrees with the Governor's budget, the Board will continue to operate under the present system.

Board Election update:

Mr. Crocker stated that, pursuant to statute, the Board sets the election date which cannot be scheduled later than June 15. Mr. Crocker stated that June 15 falls on a Sunday and, therefore, proposed Friday, June 13, 2014.

Mr. Crocker said that the Ethics Commission has agreed to tabulate the election results, as they do not have any merit employees.

Mr. Blevins moved to set the election date for Friday, June 13, 2014. Judge Chandler seconded and the motion carried 5-0.

[Note: Dr. Stevens arrived at 9:45 a.m.]

4. **PERSONNEL CABINET'S REPORT - NONE**

5. **ORAL ARGUMENTS**

A. Otis Mills v. Justice and Public Safety Cabinet (Juvenile Justice) (2012-277)

Present for oral arguments were counsel for the Appellant, the Hon. Paul Fauri, and counsel for Appellee, the Hon. Adam Adkins. After presenting oral arguments, the parties answered questions from the Board.

6. **INVESTIGATIONS**

Request for investigation referred by Executive Branch Ethics Commission
against the Public Service Commission - **Update**

Mr. Sipek stated that at the last meeting the Board approved to investigate the Public Service Commission at the request of the Executive Branch Ethics Commission. The Board asked staff to present a plan of action at the February meeting.

Mr. Sipek presented a plan of action (a copy given to the Board members), to include: requesting all documents relating to the filling of the Administrative Specialist I position; requesting documents relating to Ms. Hunt's employment; scheduling interviews; and preparing a report and recommendation for the Board's consideration. Once the Board has approved the report, staff will submit a final report to the Executive Branch Ethics Commission.

Mr. Blevins asked if employees were disciplined as a result of the investigation, would these employees have the right to file an appeal with the Personnel Board and, if so, would it compromise the investigation. Mr. Sipek stated that it might not compromise the investigation, but it might complicate the hearing. It's unknown during an investigation whether an employee will file an appeal, but staff handles whatever follows as best as possible. To-date, no one has filed an appeal. Judge Chandler stated that if someone files an appeal, the investigation will have to be separated from the adjudication.

7. **CLOSED SESSION**

Mr. Gillis moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications. Mr. Blevins seconded. Chairman Sapp stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 6-0. (10:15 a.m.)

Mr. Blevins moved to return to open session. Judge Chandler seconded and the motion carried 6-0. (11:15 a.m.)

8. **CASES TO BE DECIDED**

The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

A. Otis Mills v. Justice and Public Safety Cabinet (Juvenile Justice) (2012-277)

Mr. Blevins moved to note Appellant's exceptions and oral arguments and to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 6-0.

B. Paul Holbrook v. Justice and Public Safety Cabinet (Corrections) (2012-156) **Deferred from January meeting**

Judge Chandler moved to note Appellee's exceptions and oral arguments and to accept the Final Order sustaining the appeal to the extent that the demotion be rescinded and a written reprimand be issued, as attached to the minutes. Ms. Herndon seconded and the motion carried 6-0.

C. Lisa Aug v. Department of Veterans' Affairs (2013-067)

Mr. Gillis moved to accept the recommended order dismissing the appeal. Mr. Blevins seconded and the motion carried 6-0.

D. Ricky Cox v. Justice and Public Safety Cabinet (Corrections) (2013-080)

Judge Chandler moved to accept the recommended order dismissing the appeal (with clerical correction). Ms. Herndon seconded and the motion carried 6-0.

- E. Teresa Fuller v. Justice and Public Safety Cabinet (Corrections) (2013-132)

Mr. Gillis moved to accept the recommended order dismissing the appeal. Mr. Blevins seconded and the motion carried 6-0.

Show Cause Orders - Appeals Dismissed – No Response Filed

The following cases had a show cause order entered by the hearing officer recommending that the appeals be dismissed for failure to timely prosecute unless a statement was filed by the Appellants stating sufficient cause to excuse their failure to appear at the scheduled hearing. There were no responses submitted by the Appellants to the show cause orders.

- G. Adam Kidd v. Energy and Environment Cabinet
H. Jordan Paxton v. Finance and Administration Cabinet

Dr. Stevens moved to find that the Appellants had not responded to the show cause orders and that the recommended orders be accepted *en bloc* dismissing the appeals for failure to timely prosecute the appeals. Mr. Gillis seconded and the motion carried 6-0.

9. **WITHDRAWALS**

Ms. Herndon moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Dr. Stevens seconded and the motion carried 6-0.

- A. Terry Brogan v. Department of Local Government
B. Steven Brooks v. Justice and Public Safety Cabinet (Corrections)
C. Steven Lewis v. Education and Workforce Development Cabinet
D. James Marshall v. Tourism, Arts and Heritage Cabinet
E. Michael Milcznski v. Personnel Cabinet
F. Jeffrey Roberts v. Public Protection Cabinet
G. Steven Smith v. Transportation Cabinet
H. Joyce Stewart v. Cabinet for Health and Family Services
I. Jeff Yates v. Transportation Cabinet
J. Donald Criswell v. Personnel Cabinet and Justice and Public Safety Cabinet
(Juvenile Justice)
K. Jeanne G. Devers v. Education and Workforce Development Cabinet
L. Glen Martin v. Cabinet for Health and Family Services
M. Neil Terry v. Cabinet for Health and Family Services

10. **SETTLEMENTS**

Ms. Herndon moved to accept the settlements "A through G" *en bloc* as submitted by the parties, and to sustain the appeals to the extent set forth in the settlements. Dr. Stevens seconded and the motion carried 6-0.

- A. Richard Betsworth v. Department of Agriculture (mediated)
- B. Melissa Hines v. Cabinet for Health and Family Services
- C. Gloria Mullins v. Cabinet for Health and Family Services
- D. Sandra Pepper v. Cabinet for Health and Family Services
- E. Tara Kettenring v. Finance and Administration Cabinet
- F. Gerald Lee v. Transportation Cabinet
- G. Barbara Steger v. Finance and Administration Cabinet

Mr. Gillis moved to accept settlement "H" as submitted by the parties, contingent on securing the Appointing Authority's signature, and to sustain the appeals to the extent set forth in the settlements. Ms. Herndon seconded and the motion carried 6-0.

- H. Carol Krausman v. Justice and Public Safety Cabinet (Juvenile Justice)¹

11. **OTHER**

Mr. Blevins moved to change the June meeting from Friday, June 13, to Monday, June 16, 2014. Judge Chandler seconded and the motion carried 6-0.

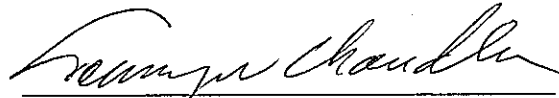
Judge Chandler advised that he will not be present at the March 2014 meeting.

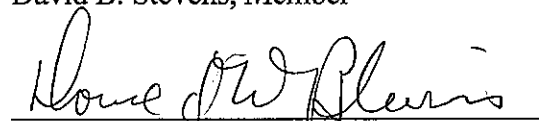
There being no further business, Mr. Blevins moved to adjourn. Dr. Stevens seconded and the motion carried 6-0. (11:30 a.m.)

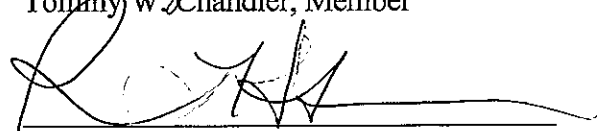

Wayne D. Sapp, Chairman


Larry Gillis, Vice Chairman


David B. Stevens, Member


Tommy W. Chandler, Member


Donald W. Blevins, Member


Ramona Herndon, Member

¹ The Settlement Agreement with the signature of Hasan Davis, the Appointing Authority for the Department of Juvenile Justice, was filed on February 14, 2014.

22. Appellee's Exhibit 3 was introduced through the witness and is a copy of the May 29, 2012 notice of intent to demote letter delivered to the Appellant. Warden Meko explained that the letter was drafted by the personnel department at the LSCC and approved by the Division of Personnel in Frankfort. According to Warden Meko, ultimately the decision to demote the Appellant rested on the fact he had let him down and compromised the trust he had placed in him. Importantly, Warden Meko admitted the Appellant's actions were not in violation of Corrections Policy and Procedure 3.1 as alleged in the intent to demote letter.

- B. **Delete** Background paragraph 24 and substitute the following:

24. Appellee's Exhibit 5 was introduced through the witness and is a copy of LSCC Policy and Procedure 03-01-01. Warden Meko specifically states that the Appellant's actions were in violation of section K (11) which states:

Engaging in any other activity which shall be deemed detrimental to the proper performance of your duties as an employee of the Department of Corrections and LSCC or which comes into conflict with attainment of goals and the mission of the Department and LSCC.

- C. **Delete** Background paragraph 33 and substitute the following:

33. At this time, the parties stipulated that Warden Meko had given the Appellant "highly effective" performance evaluations between 2008 and 2012, including the Appellant's interim evaluation performed in February 2008 wherein the Appellant's attempt to disturb the hierarchy of the facility was mentioned.

- D. **Add** Conclusion of Law, paragraph 9:

9. The Board concludes that the punishment of demotion of Appellant was excessive and erroneous under the circumstances and that instead of disciplinary action, a corrective action of a written reprimand is the proper remedy for Appellant's behavior. In making this determination, the Board notes that the inappropriate e-mail the Appellant sent was seen only by a high-ranking Corrections official and did not reveal any confidential information. The Board also concludes that the request to not let the Warden know was ill-advised and self-serving, but was not disloyal under all the surrounding circumstances.

E. **Delete** the Recommended Order, and substitute the following:

IT IS HEREBY ORDERED that the appeal of **PAUL HOLBROOK VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2012-156)** be **SUSTAINED to the extent** that the demotion of the Appellant be rescinded, and Appellant be restored to his previous position as Deputy Warden, or a position of like pay and status. The Board further **ORDERS** that Appellant shall be awarded back pay and benefits from the date of the demotion pursuant to KRS 18A.095(22), and to otherwise be made whole. The Appellee shall issue a written reprimand for his poor behavior as demonstrated in the evidence. Further, the Appellee is **ORDERED** to reimburse Appellant for any leave time attending the evidentiary hearing and any pre-hearing conferences at the Personnel Board. [KRS 13B.120, KRS 18A.105, and 200 KAR 12:030.]

IT IS FURTHER ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer as Altered be, and they hereby are, approved, adopted and incorporated herein by reference as a part of this Order and the Appellant's appeal is **SUSTAINED to the extent** stated above.

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

SO ORDERED this 14th day of February, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day mailed to:

Hon. Amber Arnett
Hon. Elmer J. George
Hon. Meredith Booth
Stephanie Appel